IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO 1781 OF 2004

The State of Maharashtra
(At the instance of the State
CID (Crime), Pune, M.S.) ..Petitioner
V/s
Ibrahim Adamwall Patel
(Presently confined to
Central Jail, Nashik.) ..Respondent.

Mr. V.B. Konde Deshmukh,,APP for the petitioner

None for the respondent, though served.

**CORAM : SRI R.M.S. KHANDEPARKAR AND
SRI A.A. SAYED, JJ.**

DATE : 10TH DECEMBER, 2007

ORAL JUDGMENT (PER R.M.S. KHANDEPARKAR, J.)

1. Heard the learned APP. None present for the respondent, though duly served.

2. By the present petition, the petitioner is seeking to quash and to set aside the order passed by the Additional Sessions Judge, Mumbai in Criminal Revision Application No. 85 of 2002 on 4th September, 2002 whereby the Additional Sessions Judge has set aside the order dated 18th December, 2001

passed by the Metropolitan Magistrate, Mumbai in Case No.55/Misc/2001. The contention of the petitioner is that the Magistrate exercising its power under section 156(3) of Criminal Procedure Code cannot direct the State CID to conduct the investigation, and the powers of the Magistrate can be exercised to direct the police officer attached to the Police Station situated within the territorial jurisdiction of the concerned magistrate.

3. Placing reliance on the decision of the learned Single Judge of Karnataka High Court in **Narsimhaiah V. State of Karnataka and another**, reported in 2002 CRI.L.J. 4795, the learned APP has stated that the Magistrate's power to issue directions to the police authorities to conduct the investigation are in terms of the provisions of law comprised under section 156(3) of Criminal Procedure Code and both these provisions nowhere empowers the Magistrate to direct the State CID to conduct the investigation. He has also drawn our attention to the decisions of the Apex Court in the matter of **Mohad. Yousuf V. Smt. Afaq Jahan & Anr.**, reported

in 2006 CRI.L.J. 788, **Central Bureau of Investigation through S.P. Jaipur V. State of Rajasthan and another,** reported in AIR 2001 S.C. 668, **Rakesh Kumar Mishra V. State of Bihar and Ors.** reported in 2006 AIR SCW 189 and also **H.S. Bains V. The State (Union Territory of Chandigarh**, reported in AIR 1980 S.C. 1883. He has further drawn our attention to the provisions of Manual of Instructions State CID (Crime) Maharashtra and particularly Chapter III thereof. He has further submitted that those provisions could not amount to amend the provisions of Criminal Procedure code and Magistrate will have to function within the provisions of law under the said Code and Magistrate does not possess inherent power, nor is empowered to travel beyond the powers specified under the Code.

4. In the case in hand the learned Metropolitan Magistrate by its order dated 18th December, 2001 had dismissed the complaint filed by the respondent. The complaint of the respondent was against the police officer for illegal arrest and detention. The respondent being aggrieved by the said order

preferred the Criminal Revision Application No. 85/2002, which came to be allowed by the Additional Sessions Judge, Mumbai by the impugned order dated 4th September, 2002 while further setting aside the order of the trial Court directed the trial Court to pass an order to refer the matter to the State CID under section 156(3) of Cr.P.C. for investigation. Consequently, the Metropolitan Magistrate on 23rd November, 2002 passed impugned order and directed the Additional Commissioner of Police attached to CID State to investigate into the matter. The said order was passed in exercise of powers under section 156(3) of Cr.P.C.

5. The short point for consideration which arises is whether the Magistrate in exercise of the powers under section 156(3) of Cr.P.C. can direct the investigation by State CID.?

6. Section 156(1) provides that "any police officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local

area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII." Sub-section (2) thereof provides that "no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate" and sub-section (3) which is relevant for consideration provides that "Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

7. Plain reading of sub-section (3) of Section 156 would, therefore disclose that the Magistrate who is empowered to take cognizance of an offence in terms section 190 of Cr.P.C. can direct the investigation thereof by any police officer in charge of the police station, who is empowered to perform his duties within the local area demarcated for such police station and that such local area lies within the jurisdiction of the Court of the Magistrate.

8. Section 14 (1) provides that "subject to the

control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrate appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be vested under this Code. Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established". Sub-section (2) of Section 14 provides that "except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district". Section 173 (2) (i) provides that as soon as the investigation is completed, the officer in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by giving the details specified in the said section. Section 177 of Chapter XIII provides that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed".

9. Conjoint reading of sections 14, 156(3), 173 and 177 of Cr.P.C. would reveal that the authority of the Magistrate to direct the investigation to a police officer relate to his powers to take cognizance of such offence and secondly to a police officer, who can function within the jurisdiction of the local limits of his Court and this authority or empowerment does not travel beyond those limits. Section 190 of Cr.P.C. speaks of the power of the Magistrate "to take cognizance" of an offence. The Code does not define the said expression. But, it is settled law that the cognizance tantamount to taking judicial notice of an offence. It is different from merely initiating proceedings. Commencement of criminal proceedings relating to an offence by itself does not amount to taking cognizance.

10. The State CID is a department constituted and functions in terms of Manual of Instructions framed by the State Government. Clause 6(a) Chapter III of the said Manual Provides that " each of the 7 Units of the CID at Pune, Kolhapur, Navi Mumbai, Nashik, Nagpur, Amravati and Aurangabad will be in the charge

of Additional Superintendent of Police, who will have under him the required number of Dy. Ss.P., Inspectors, Sub-Inspectors, Head Constables, Clerks and Peons". It further provides "the Executive Officer attached to these Units including the Additional Superintendents will be field officers and the jurisdiction of each Unit will generally correspond to that of the respective Range". The Range is as specified under clause 4 of Chapter II. Sub-clause (c) of clause 6 of Chapter III provides that "whenever a case is taken up by the CID it will be entrusted to a field officer by issuing a specific order to him" further sub-clause (e) provides that "every case coming to the State CID (Crime) for investigation will be treated as a "Special Report" case. No sooner the order transferring a case to the State CID (Crime) is received, the concerned S.P. CID (Crime) will promptly appoint the Investigating Officer. On receipt of the order, the I.O. will visit the scene of offence without any loss of time. The Additional S.P. CID (Crime) having jurisdiction over the concerned Police Station will also leave for the scene of offence within length of time and guide

the investigation from the initial stage".

11. The above provisions of the Manual obviously, disclose that on receipt of a case by the State CID, the investigation in that regard would be entrusted to an investigating officer to be appointed by the S.P. State CID (Crime). The S.P. certainly enjoys discretion in the matter of appointment of appointment of an investigating officer as his powers in that regard are not confined to the investigating officer attached to any particular police station, albeit such exercise of powers cannot be done arbitrarily.

12. Clause 1 of Chapter I of the Manual Provides that "the Maharashtra State Criminal Investigation Department (Crime) Pune, will concern itself with the collection, collation and dissemination of information relating to crime and criminals, subject to such orders as the Director General of Police and the State Government may issue from time to time. It will also concern itself with the investigation of offences and enquiries of a complicated and serious

nature entrusted by the State Government and the Director General of Police, M.S. The State CID (Crime) will also be responsible for the efficient functioning of the State Crime Record Bureau". Clause 2 enumerates the functions of the State CID (Crime) and they are apparently in consonance with the object disclosed from clause 1 regarding the constitution of such department for investigation relating to offences of serious nature.

13. Clause 2 of Chapter III of the Manual provides that "investigation of crime by CID will be ordinarily confined to (a) case of exceptional difficulty of importance and (b) organised crime extending over to two or more districts. Such are generally referred to the CID by Government or the Director General of Police. Unit Commanders desirous of CID investigation in particular case of importance will refer such cases to the Director General who will, in his discretion, pass orders for CID investigation. The CID will also take up case for investigation when they are referred to them by Courts under section 202 of the Criminal Procedure

Code".

14. The provisions of law comprised under the Code of Criminal Procedure nowhere empower the Magistrate to direct the investigation to the police officer other than one attached to the police station situated within the territorial jurisdiction of the Court of such a Magistrate. Such powers undoubtedly can be exercised by this Court in writ jurisdiction or even while exercising the powers under section 482 of Cr.P.C. It is settled law that a Magistrate does not enjoy inherent power. His powers are those specified under the Code and has to function strictly in accordance with the provisions of law made thereunder. The provisions of law comprised under the Cr.P.C. cannot be amended otherwise than the procedure known to law. The issuance of Manual of Instructions cannot be said to cause amendment to the Code of Criminal Procedure, as rightly submitted by the learned APP. The provisions comprised under clause 2, Chapter III of the Manual would not empower a Magistrate to refer the matter for investigation by CID.

15. The learned Single Judge of the Karnataka High Court while dealing with the similar issue after taking note of various earlier decisions of Karnataka High Court, as well as the decision of the Supreme Court, held that the learned Magistrate referring the complaint under section 156(3) of Cr.P.C. was not empowered to direct the State CID or COD to conduct the investigation in the matter before it.

16. The decision of the Apex Court which has been relied upon is in relation to the absence of the powers to the Magistrate to direct CBI to conduct the investigation either in exercise of powers under section 156(3) or under section 202(1) Cr.P.C. The decisions is not strictly on the point in issue. It was clearly observed in **CBI through S.P. Jaipur** (Supra) that the primary responsibility for conducting investigation into offence in cognizable cases vests with such police officer who is in charge of the police station. It was held therein that "section 156(3) of the Code which empowers a Magistrate to direct such officer-in-charge of the

police station to investigate any cognizable case over which such magistrate has jurisdiction. It is clear that a place or post declared by the Government as police station, must have a police officer-in-charge of it and if he, for any reason, is absent in the station house, the officer who is in next junior rank present in the police station, shall perform the function as officer-in-charge of that police station". The primary responsibility for conducting investigation into offence in cognizable cases vest with such police officer. under section 156(3) of the Code empowers a Magistrate to direct such officer-in-charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction." The jurisdiction to direct the investigation to a police officer in terms of the provisions of law is restricted to a police officer of the police station over which the concerned Magistrate has jurisdiction. This would reveal that a Magistrate cannot issue direction for investigation by the police officer of a police station situated beyond the territorial jurisdiction of his Court. This would apply in case of CBI as

well as State CID (Crime).

17. For the reasons stated above therefore, the impugned order passed by the Additional Sessions Judge directing the Magistrate to refer the matter to State CID cannot be sustained, and for the same reasons the impugned order directing the State CID to conduct investigation is also not maintainable and both these orders are liable to be quashed set aside.

18. The petition therefore, succeeds. The impugned orders are therefore, quashed and set aside and the matter is remanded to the Court of Additional Sessions Judge to decide as to whether the order passed by the Metropolitan Magistrate needs to be considered and whether the investigation in that regard is required to be directed in terms of Section 156(3) of Code. The learned Additional Sessions Judge shall dispose of the Revision Application within four months from the receipt of the writ of this Court after hearing the parties in accordance with the provisions of law. Rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR,J)

(A.A. SAYED, J.)